IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 163 OF 2006

M/s. Timblo Minerals Pvt. Ltd.,
P.O. Box No.34, Kadar Manzil,
Margao-Goa.
Through its Director,
Mr. Arvind M. Hodarker,
residing at Alt Mount Society,
Margao, Goa. ..... Applicant

V e r s u s

1. The State of Goa
   Through Chief Secretary,
   Secretariat, Panaji, Goa.

2. Shri Dharmu Raju Desai,
   Son of Raju Desai,
   resident of Uddamodi,
   Uguem, Sanguem, Goa. ..... Respondents

Shri A.N.S. Nadkarni, Advocate for the Applicant.
Ms. W. Coutinho, Public Prosecutor for Respondent No.1.
Shri S.S. Kakodkar, Advocate for Respondent No.2

CORAM: **N. A. BRITTO, J**.

DATE: **27th April, 2006**

ORAL ORDER

Heard Shri Nadkarni, the learned Counsel on behalf of the Applicant/first informant and Shri S.S. Kakodkar on behalf of Respondent No.2/accused.

2. The Applicant/first informant has invoked extraordinary jurisdiction of this Court under Section 82 of the Criminal Procedure Code, 1973 ('Code' for short) to assail two orders of the Courts below, one by which the learned JMFC ordered the return of the truck no. GA-02-T-9858 in favour of the said accused in proceedings under Section 457 of the Code and the other which by the first order has been upheld by learned Additional Sessions Judge, Margao.

3. The undisputed facts are that the Applicant had a Hire-Purchase agreement with the accused dated 03/05/1999 and so also another Service agreement of the same date. The applicant had purchased the said truck on a loan taken from Sundaram Finance Company Ltd. which loan was closed on 6/09/2002 and the endorsement of hypothecation of the said vehicle in favour of the said Sundaram Finance Company Ltd. was cancelled. The said truck was to be operated by the accused to carry the ore from the mines of the applicant to the places indicated by them and the accused was to get only a sum of Rs.5,000/- per month. The other payments towards the Hire-Purchase agreement were to be adjusted towards the repayment of the finance obtained for the purchase of the said vehicle. The only disputed position is that the applicant claims that a sum of Rs.6,69,598/- is still due and payable by the accused towards the said

Hire-Purchase agreement which fact is contested by the accused by submitting that whatever was to be paid by the accused towards the Hire-Purchase agreement was paid prior to 06/09/2002 when the applicant paid the entire amount due to Sundaram Finanace Company Ltd. and got the hypothecation of the vehicle cancelled from the R.C. Book. Again, there is no dispute that on or about 12/04/2005 the Manager of the Applicant filed a case against the accused for theft of iron ore, under Section 379 of Indian Penal Code on the allegation that the accused had committed theft of the iron ore belonging to the applicant and pursuant to the investigations into the said complaint, the said truck came to be seized by the police on 15/04/2005.

4. After the seizure of the truck by the police the accused filed an application dated 26/04/2005 and the applicant filed an application on 10/05/2005, for return of the said truck, and both the said applications came to be disposed of by the learned JMFC by common order dated 14/07/2005. The learned JMFC in ordering the release of the truck in favour of the accused observed that the said truck was seized from the possession of the accused and that only subsequently that the said Hire-Purchase agreement was terminated. In fact there is no dispute that the Hire-Purchase agreement came to be terminated by notice dated 9/05/2005. The learned JMFC further observed that the

possession of the accused of the said truck was legal and lawful and subsequently cancellation of the Hire-Purchase agreement was an afterthought on the part of the applicant and therefore the accused was entitled to the possession of the said truck. The applicant assailed the said order before the Court of Sessions in a revision application. It is submitted on behalf of the accused that the said revision application was not maintainable. Nevertheless the learned Additional Sessions Judge in disposing of the said revision application by order dated 10/02/2006 observed that since the accused was having a Hire-Purchase agreement in his favour it is he who was entitled to possess the vehicle till the completion of such agreement or termination of the same and therefore the learned Magistrate was right in directing the authorities to hand over the truck to the accused with certain conditions.

5. Shri Nadkarni, on behalf of the applicant, has submitted that in view of subsequent termination of the agreement by notice dated 09/05/2005 the Courts below ought to have seen that it was the applicant who was entitled to the possession of the said truck on the date when the application was made and since the said Hire-Purchase agreement was terminated by the applicant it is the applicant who was entitled to the possession of the said vehicle and that is also the view

which was held by this Court in the case of ***M/s. B.C.L. Financial Services Ltd.*** **Versus** ***State of Maharashtra and Ors.*** (1999 CRI.L.J. 2305).

6. On the other hand, Shri Kakodkar, learned Counsel on behalf of the accused has submitted that incase any dues are still payable to the applicant, the same were not set out in the notice of termination of Hire-Purchase agreement dated 9/05/2005. Shri Kakodkar has further submitted that extraordinary jurisdiction could be allowed to invoke only incase there was miscarriage of justice or gross error of law and in this case there has been none, for both the Courts below have rightly decided that it is the accused who was entitled to the possession of the said truck as it was in the lawful possession of the accused at the time of seizure by the police. Shri Kakodkar also submits that the facts of the case of ***M/s. B.C.L. Financial Services Ltd. (supra)*** are quite distinguishable and cannot be applied to the facts of the case at hand.

7. There can be no dispute as regards the proposition of law as far as Hire-Purchase agreements are concerned as set out by this Court in the case of ***M/s. B.C.L. Financial Services Ltd. (supra)*** following the Judgment of the Supreme Court in ***M/s. Damodar Valley***

Corporation Versus The State of Bihar (AIR 1961 SC 440) and that of the Division Bench of the Karnataka High Court in ***M/s. Shriram Transport Finance Co. Ltd. Versus Shri R. Khaishiulla Khan & Ors.*** (1993 CR.L.J. 1069) and which states that the contract of hire-purchase simpliciter confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions; and the solemn agreements entered into by the parties, under which contracts and obligations are created cannot be brushed aside simply because Section 2(30) of the Act (Motor Vehicles Act, 1988) widens the meaning of the word "Owner" to include the person in possession of the vehicle, under hire-purchase agreement. On behalf of the applicant, reliance has been placed on a recent decision of the Apex Court in the case of ***Managing Director, Orix Auto finance (India) Ltd. versus Shri Jagmander Singh & Anr.*** [2006 (2) ALL MR (S.C.) 68] wherein the Apex Court has stated that if agreements permit the financier to take possession of the financed vehicles, there is no legal impediment on such possession being taken.

8. It may be true that in terms of Clauses 11 & 17 of the Hire -Purchase agreement between the applicant and the accused, the applicant had liberty to take possession of the vehicle for breach of the terms of the said agreement but that is entirely a different matter as the fact remains that the applicant had chosen not to put an end to the said

agreements atleast till 12/04/2005 when the offence against the accused came to be registered. Ordinarily, the Courts are required to see while considering applications under Section 457 of the Code as to who is entitled to the possession of property and that has got to be decided with reference to the date when seizure was made. In the case at hand, the accused was in lawful possession of the vehicle, pursuant to the Hire-Purchase agreement dated 03/05/1999 at the time when the vehicle was seized from him as well as when the accused made the application for its release. The said agreement was till then still in force and came to be terminated only thereafter on 9/05/2005 and the application for the return of the vehicle came to be filed on behalf of the applicant on 10/05/2005. The facts of the case of ***M/s. B.C.L. Financial Services Ltd. (supra)*** are quite distinguishable. In that case the hirer had even gone to the extent of selling the vehicle to the third party in violation of the Hire-Purchase agreement. That is not the case at hand.

9. In my view since the said vehicle was seized from the lawful possession of the accused, and it was in his lawful possession pursuant to Hire-Purchase agreement dated 3/05/1999, both the Courts below were right in ordering the return of the same to his possession. Incase the applicant has now terminated the said

agreement dated 3/05/1999 by notice dated 9/05/2005 the remedy of the applicant is elsewhere, and, incase the applicant is entitled to take possession of the same pursuant to any of the clauses of the said agreement that is entirely a different matter but that possession cannot be obtained by invoking Section 457 of the Code. In my view both the Courts below rightly had ordered the return of the said vehicle in favour of the accused. No case is made out in exercise of extraordinary jurisdiction. The application is hereby dismissed.

10. This order may not be taken as a pronouncement as far as the rights of the parties are concerned under the said Hire-Purchase agreement. Shri Kakodkar prays that the interim order be vacated. Shri Nadkarni prays that the same be continued till the time the applicant files a suit and obtains appropriate reliefs, for a period of two weeks. I am not inclined to accede to the request of learned Counsel Shri Nadkarni. On dismissal of the petition the interim order, if any, would come to an end. Petition dismissed.

N.A. BRITTO, J.

NH